

<b>COMPLIANCE BOARD OPINION NO. 99-16</b>
---

September 23, 1999

*Mr. Steve Crane*

The Open Meetings Compliance Board has considered your complaint that a closed session of the Hyattsville City Council on August 2, 1999, violated the Open Meetings Act. For the reasons stated below, the Compliance Board finds that the City Council had authority to close the meeting but failed to follow required procedures in doing so.

**I**

**Complaint and Response**

Your complaint alleged, and the City's response confirmed, that a closed session of the Hyattsville City Council was held after the Council's open meeting on August 2, 1999. Your complaint alleged both a procedural and a substantive violation in connection with this closed session. First, your complaint pointed out "that the vote to go into executive session was put on a consent agenda with several other housekeeping items before the Council.... [T]he consent agenda was approved by a show of hands, unanimously and without debate, and included approval of the motion in question, which called for a closed session of the Council to discuss 'contract and property' issues." This procedure, your complaint suggested, failed to satisfy the Act's procedural requirements. Second, your complaint alleged that the City Council did not have a proper basis for closing the meeting. The exception applicable to "the acquisition of real property for a public purpose" did not apply, in your view, because the property in question is not one that the City is considering acquiring. Rather, you have been informed "that the property issue in question was a proposal by the Washington Suburban Sanitary Commission to sell its former headquarters building in Hyattsville to an unnamed developer, who reportedly wants to convert it into low-income senior housing. The WSSC had apparently asked Council's blessing for the project before proceeding in negotiations."

In a timely response on behalf of the City Council, Lance W. Billingsley, Esquire, acknowledged that a closed session was held on August 2 but contended that the Open

Meetings Act was complied with. On the procedural issue, Mr. Billingsley explained as follows:

The consent agenda is used by the City to deal with matters that are “anticipated” to be without opposition. Any Councilmember may request that an item be withdrawn from the consent agenda if he or she feels that it warrants discussion or will not be accepted unanimously. The item would then automatically be placed on the regular agenda. The motion for an executive session did explain its purpose in accordance with the Open Meetings Law.

As to the substantive issue, the basis for closing the session, Mr. Billingsley offered alternative justifications. Two exceptions were said to be the basis for the closing: §10-508(a)(3), relating to the acquisition of real property for public purpose, and §10-508(a)(4), relating to business relocation. As Mr. Billingsley explained, the business that was considering moving to the Hyattsville property “requested the closed meeting because of its reluctance to share its proposal which it deemed proprietary.... In this instance, the business was considering location in Hyattsville based upon a set of criteria and its proprietary proposal. The City was asked to consider the criteria and its acceptability. Without a satisfactory answer the business does not plan to locate in Hyattsville.” In addition, Mr. Billingsley stated, part of the proposal “would permit the City to acquire a portion of the property for use as public parking” and thus was encompassed by the property acquisition exception.

Mr. Billingsley also supplied a legal memorandum that made one additional argument: that the topic of discussion was an executive function not subject to the Open Meetings Act. Under this view, the City Council’s invocation of exceptions within the Act was gratuitous.

## **II**

### **Analysis**

If the City Council’s discussion of the developer’s proposal came within the “executive function” exclusion, the Act was inapplicable to the August 2 meeting. Therefore, the Compliance Board must first consider this contention.

With exceptions not relevant here, the Open Meetings Act “does not apply to a ... public body when it is carrying out ... an executive function.” §10-503(a)(1)(i). The term “executive function” is in part defined by what it is not: a discussion of an advisory, judicial, legislative, quasi-judicial, or quasi-legislative function is not an executive function. §10-

502(d)(2). If a discussion is not encompassed by any of these other defined functions *and* involves “the administration of” existing law, including “a law of a political subdivision of the State,” it falls within the executive function. §10-502(d)(1)(ii).

Based on the sparse information available to it, the Compliance Board is unable to say that this discussion was excluded from the Act as an executive function. To the extent that the discussion represented an early phase of the City’s consideration whether to enter into a contract with the developer, it was a quasi-legislative, rather than an executive, function. *See* §10-502(j)(3) (quasi-legislative function includes “the process or Act of ... approving, disapproving, or amending a contract”). In addition, even if the discussion were outside any of the other defined functions, it is not clear what existing law the City Council was implementing.

The Compliance Board does agree, however, that the two exceptions identified in Mr. Billingsley’s letter appear to be a sufficient justification for the closed session. A public body may meet in closed session to “consider the acquisition of real property for a public purpose in matters directly related thereto,” §10-508(a)(3), or to “consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State,” §10-508(a)(4). If, as Mr. Billingsley reported, a portion of the discussion concerned the possible acquisition of a part of the property for public parking, §10-508(a)(3) allowed that portion of the discussion to be closed. Moreover, if the overall discussion concerned a business’ possible relocation to a site in Hyattsville under circumstances in which the business insisted on the need for confidentiality, §10-508(a)(4) authorized discussion in closed session.<sup>1</sup>

Of course, a public body’s authority to close a meeting must be implemented in accordance with the Act’s procedures. Under §10-508(d)(2), “before a public body meets in closed session, the presiding officer shall”:

- (i) conduct a recorded vote on the closing of the session;
- and
- (ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

---

<sup>1</sup> We have already held that the business relocation exception applies to a proposal by a business entity to move from one site to another within the State. Compliance Board Opinion 93-3 (February 24, 1993) *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 28.

In response to the Compliance Board's request, Mr. Billingsley supplied a statement that was said to reflect conformance to the requirements of §10-508(d)(2)(ii).<sup>2</sup> This document states as follows: "Council President Brogden moved that the Mayor and Council adjourn to executive session to discuss property matters. The motion carried, with Councilmember Curry voting in opposition." This statement is legally deficient. Assuming that the phrase "to discuss property matters" is meant to be the "listing of the topics to be discussed," it is too general. More could have been said without breaching the confidentiality that justified closing the meeting. In addition, this document omits the reason for closing the meeting and a citation of authority under the Open Meetings Act. The Compliance Board urges the City Council to adopt a form of statement for closing a meeting similar to that presented in Appendix C of the Attorney General's *Open Meetings Act Manual*.

### III

#### Conclusion

In summary, the Compliance Board finds that the Hyattsville City Council had a proper basis under the Open Meetings Act to close the meeting on August 2 but violated the Act by its failure to comply with the Act's requirements for closing a session.

Very truly yours,

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb

---

<sup>2</sup> Mr. Billingsley also supplied what appeared to be draft minutes from the closed session. These minutes do not constitute the "written statement" required to be made *before* a public body meets in closed session.